

1 **UNITED STATES OF AMERICA**
2 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**
3 **Washington, D.C.**

4 **RAYMOND INTERIOR SYSTEMS**

5 **and**

Case 21-CA-37649

6 **SOUTHERN CALIFORNIA PAINTERS AND**
7 **ALLIED TRADES, DISTRICT COUNCIL NO.**
8 **36, INTERNATIONAL UNION OF PAINTERS**
9 **AND ALLIED TRADES AFL-CIO**

10 **UNITED BROTHERHOOD OF CARPENTERS**
11 **AND JOINERS OF AMERICA, LOCAL**
12 **UNION 1506**

13 **and**

Case 21-CB-14259

14 **SOUTHERN CALIFORNIA PAINTERS AND**
15 **ALLIED TRADES DISTRICT COUNCIL NO.**
16 **36 , INTERNATIONAL UNION OF PAINTERS**
17 **AND ALLIED TRADES, AFL-CIO**

18 **and**

19 **SOUTHWEST REGIONAL COUNCIL OF**
20 **CARPENTERS, UNITED BROTHERHOOD**
21 **OF CARPENTERS AND JOINERS OF AMERICA**

22 **(Party in Interest)**

23 **RESPONDENT RAYMOND INTERIOR SYSTEMS' ANSWERING BRIEF TO**
24 **PAINTERS UNION'S CROSS-EXCEPTIONS**

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1 Pursuant to the Section 102(f) of the Board's Rules and Regulations, Respondent
2 Raymond Interior Systems ("Raymond") submits its Answering Brief to the Painters' Cross-
3 Exceptions.

4 In its Cross-Exceptions, the Painters except to the make-whole portions of the ALJ's
5 recommended Remedy and Order "providing that nothing in the Order be construed as permitting
6 Respondent Raymond to withdraw or eliminate any benefit which it implemented pursuant to its
7 agreement with Respondent Carpenters Union and that it affirmatively be required to provide
8 equivalent substitute benefits to its agreement with Respondent Carpenters Union." See Painters'
9 Cross-Exceptions and Brief in Support of Cross Exceptions, page 1. Initially, Raymond would
10 note that the Painters Cross-Exceptions do not comply with the specificity requirement of Section
11 102.46(b)(1) of the Board's Rules and Regulations. Accordingly, the Painters' Cross-Exceptions
12 should be disregarded. See Board's Rules and Regulations, Section 102.46(b)(2)
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14 Raymond has filed exceptions to the ALJ's decision and contends that the ALJ erred in
15 finding violations of Sections 8(a)(1), (2) and (3) of the Act. Accordingly, Raymond does not
16 believe that the ALJ's recommended Remedy and Order is warranted. Assuming arguendo that
17 the Board upholds the ALJ's findings as to violations of Sections 8(a)(1), (2) and/or (3) herein,
18 the Board should deny the Painters' Cross-Exceptions.
19

20 Here, the ALJ correctly utilized the appropriate remedy and remedial language for the
21 violations found by the ALJ. Brooklyn Hospital Center, 309 NLRB 1163 (1994). The Painters'
22 Cross-Exceptions and the remedial relief the Painters seek should be rejected by the Board. First,
23 the Painters cannot complain that the ALJ's remedy is inadequate since the Painters did not seek
24 the remedial relief it now seeks from the ALJ and, in fact, cited Brooklyn Hospital to the ALJ in
25 support of its remedial request. Second, the remedial relief sought by the Painters is inconsistent
26 with the General Counsel's complaint and/or the General Counsel's theory and, accordingly, the
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28

1 Painters have no right to seek such relief. See, e.g., ATS Acquisition Corp., 321 NLRB 712, 712
2 fn. 3 (1996). Third, the remedial relief sought by the Painters should be rejected because it is not
3 supported by the record or applicable Board precedent.

4 New Concept Solutions, LLC, 349 NLRB 1136 (2007), cited by the Painters involved a
5 successor employer with an obligation to bargain with the predecessor union and, accordingly, is
6 distinguishable from the instant case. Here, Raymond had no continuing obligation to bargain
7 with and lawfully terminated its 8(f) agreement with the Painters Union. Riverbay Corp., 340
8 NLRB 35 (2003), also does not support the Painters' position. In Riverbay the Board ordered, as
9 the ALJ did herein, that the employer not maintain or enforce the collective bargaining agreement
10 with the unlawfully assisted union, but also ordered that the employer not withdraw any wage or
11 other benefits or terms established by the collective bargaining agreement.

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14 The Painters contend that the ALJ's recommended Remedy and Order does not make the
15 drywall finishing employees whole "because it does not fully remedy losses which Raymond's
16 employees suffered in the unlawful switch from Painters Union wages, benefits, and conditions to
17 the Carpenters Union." See Painters' Cross-Exceptions and Brief in Support of Cross Exceptions,
18 page 5. In this regard, the Painters contend that Raymond should be ordered to provide
19 "substitute benefits at a level which preserves what employees have now and which preserves any
20 other or additional benefits the employees had at the expiration of the Painters agreement at the
21 time Respondents' violated the Act." See Painters' Cross-Exceptions and Brief in Support of
22 Cross Exceptions, page 6 (emphasis added). The Painters totally ignore the fact that Raymond
23 lawfully terminated the Painters Agreement and that, at the time any alleged unlawful acts were
24 committed herein, the drywall finishing employees were not covered by a Painters Agreement
25 and Raymond was not legally compelled to provide them with any benefits under such agreement.

26
27 While the Painters cite Schwickert's of Rochester, Inc., 343 NLRB 1044 (2004), and
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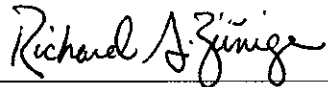
1 Board Member Liebman's dissent in Topor Contracting, Inc., 345 NLRB 1278 (2005), these
2 cases also do not support their unwarranted remedial request. Both Schwickert's and Topor
3 involved an employer's unlawful repudiation of an 8(f) agreement. This is not an unlawful
4 repudiation case and the Complaint in this matter did not make such an allegation. Accordingly,
5 the Painters' reliance on Schwickert's and Topor is misplaced.
6

7 For the foregoing reasons, the Painters' Cross-Exceptions should be denied.

8 Respectfully submitted,

9 DATED: February 24, 2009

HILL, FARRER & BURRILL LLP
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Richard S. Zuniga, Esq.

11
12 By: 
13 Richard S. Zuniga
14 Attorneys for Respondent,
RAYMOND INTERIOR SYSTEMS

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CERTIFICATE OF SERVICE

I, Richard S. Zuniga, declare as follows:

1. I hereby certify that on February 24, 2009, I filed **Respondent Raymond Interior Systems' Answering Brief to Painters Union's Cross-Exceptions** in Cases 21-CA-37649 and 21-CB-14259, via E-Filing, and I caused the original and eight (8) copies of the foregoing document to be placed in a sealed envelope and sent overnight delivery via Federal Express as follows:

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National Labor Relations Board
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Washington, D.C. 20570
Tel: (202) 273-1067

2. I hereby certify that on February 24, 2009, I caused to be served true copies of **Respondent Raymond Interior Systems' Answering Brief to Painters Union's Cross-Exceptions** in Cases 21-CA-37649 and 21-CB-14259, by first-class U.S. Mail and by E-Mail on the following parties:

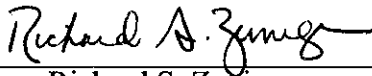
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I hereby certify that the foregoing is true and correct. Executed this 24th day of February 2009, at Los Angeles, California.


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